

§ 3560.658

7 CFR Ch. XXXV (1-1-07 Edition)

in the date order that the complete prepayment request was received.

(c) *Unfunded incentive offers.* If the borrower accepts the incentive offer but the Agency is unable to fund the incentive within 15 months, the borrower may choose one of the following actions:

(1) The borrower may offer to sell the housing project in accordance with § 3560.659. In this case the borrower will be removed from the list of borrowers awaiting incentives.

(2) The borrower may stay on the list of borrowers awaiting incentives until the borrower's incentive offer is funded. The Agency will not negotiate the incentive offer; but, at a borrower's request, may adjust the incentive amount to reflect an updated appraisal, loan balance, and terms of third party financing.

(3) The borrower may withdraw the prepayment request and be removed from the list of borrowers awaiting incentives and either continue operating the housing project for program purposes and in accordance with Agency requirements or continue processing their prepayment process in accordance with § 3560.658. If the borrower chooses to withdraw their request, the borrower may resubmit an updated prepayment request, at any time, and repeat the prepayment process in accordance with this subpart.

(4) The borrower may elect to obtain a third-party equity loan provided rents will not exceed comparable rents in the market area.

§ 3560.658 Borrower rejection of the incentive offer.

(a) If a borrower rejects the incentive package offered by the Agency or an Agency request to extended restrictive-use provisions, made in accordance with § 3560.662, the loan will only be prepaid if the borrower elects to agree to the following:

(1) The borrower agrees to sign restrictive-use provisions to extend restrictive-use by 10 years from the date of prepayment, and at the end of the restrictive-use period offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

(2) If restrictive-use provisions are in place, the borrower will agree to sign the restrictive-use provisions, as determined by the Agency, and at the end of the restrictive-use period offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

(3) If restrictive-use provisions are not in place prior to prepayment, the borrower will offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

(b) If the borrower does not elect or agree to enter an agreement in accordance with paragraph (a) of this section, then the Agency will assess the impact of prepayment on two factors: housing opportunities for minorities and the supply of decent, safe, sanitary, and affordable housing in the market area. The Agency will review relevant information to determine the availability of comparable affordable housing for existing tenants in the market area and if minorities in the project, on the waiting list or in the market area will be disproportionately adversely affected by the loss of the affordable rental housing units.

(1) If the Agency determines that prepayment will have an adverse impact on minorities, then the borrower must offer to sell to a qualified nonprofit organization or public body in accordance with the provisions of paragraph (a) of this section.

(2) If the Agency determines that the prepayment will not have an adverse effect on housing opportunities for minorities but there is not an adequate supply of decent, safe, and sanitary rental housing affordable to program eligible tenant households in the market area, the loan may be prepaid only if the borrower agrees to sign restrictive-use provisions, as determined by the Agency, to protect tenants at the time of prepayment.

(3) If the Agency determines that there is no adverse impact on minorities and there is an adequate supply of decent, safe, and sanitary rental housing affordable to program eligible tenant households in the market area the prepayment will be accepted with no further restriction.

(c) If the borrower agrees to the restrictive-use provisions, as determined by the Agency, the applicable language must be included in the release documents and the borrower must execute a restrictive-use agreement acceptable to the Agency and a deed restriction.

(d) If the borrower will not agree to applicable restrictive-use provisions, as determined by the Agency, the borrower must offer to sell to a nonprofit or public body in accordance with § 3560.659 or withdraw their prepayment request.

§ 3560.659 Sale or transfer to nonprofit organizations and public bodies.

(a) *Sales price.* For the purposes of establishing a sales price when a borrower is required or elects to sell a housing project to a nonprofit organization or public body, two independent appraisals will be ordered, one by the Agency and one by the borrower. Both appraisals will conclude market value and be in accordance with subpart P of this part. If the borrower's assessment of the Agency's appraised market value indicates that no further appraisal is needed, the borrower may agree to accept the Agency's appraisal.

(1) The expense of the borrower's appraisal shall be borne by the borrower. The appraiser selected may not have an identity of interest with the borrower.

(2) If the two appraisers fail to agree on the market value, the Agency and the borrower will jointly select an appraiser whose appraisal will be binding on the Agency and the borrower. The Agency and the borrower shall jointly fund the cost of the appraisal.

(b) *Marketing to nonprofit organizations and public bodies.* If a borrower must offer the property for sale to a nonprofit organization or public body under this paragraph, the borrower must take the following actions to inform appropriate entities of the sale:

(1) The borrower must advertise and offer to sell the project for a minimum of 180 days. The borrower may choose to suspend advertising and other sales efforts while eligibility of an interested purchaser is determined. If the purchaser is determined to be ineligible, the borrower must resume advertising for the balance of the required 180 days.

(2) The Agency will assist the borrower in initially notifying nonprofit organizations and public bodies.

(3) The borrower must provide the nonprofit organizations and public bodies contacted with sufficient information regarding the housing project and its operations for interested purchasers to make an informed decision. The information provided must include the minimum value of the housing project based on the market value determined in accordance with paragraph (a) of this section.

(4) If an interested purchaser requests additional information concerning the housing project, the borrower must promptly provide the requested materials.

(c) *Preference for local nonprofit and public bodies.* Local nonprofit organizations and public bodies have priority over regional and national nonprofit organizations and public bodies. The Agency may determine that no local nonprofit organizations or public bodies are available to purchase the housing project. After this determination, the borrower may accept an offer from a regional or national nonprofit organization or public body.

(d) *Eligible nonprofit organizations.* To be eligible to purchase properties under the conditions of this subpart, nonprofit organizations may not have among its officers or directorate any persons or parties with an identity-of-interest (or any persons or parties related to any person with identity-of-interest) in loans financed under section 515 that have been prepaid. In addition to local nonprofit organizations, eligible nonprofit organizations include regional or national nonprofit organizations or public bodies provided no part of the net earnings of which accrue to the benefit of any member, founder, contributor or individual.

(e) *Requirements for nonprofit organizations and public bodies.* To purchase and operate a housing project, a nonprofit organization or public body must meet the following requirements:

(1) The purchaser must agree to maintain the housing project for very low- and low-income families or persons for the remaining useful life of the housing and related facilities. However,